

*Draft Proposal for the*

# **RECYCLING AMERICA'S BROWNFIELDS ACT**

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**From the National Brownfields Coalition:**

**The U.S. Conference of Mayors  
National Association of Counties  
Northeast-Midwest Institute  
National Association of Local Government  
Environmental Professionals  
National Conference of Black Mayors  
International City/County Management Association  
Local Initiatives Support Corporation  
National Association of Towns and Townships  
National Association of Development Organizations  
International Council of Shopping Centers  
Community Revitalization Alliance  
The Real Estate Roundtable  
National Association of Home Builders  
National Association of Industrial & Office Properties  
Environmental Bankers Association  
National Brownfield Association  
National Brownfield Nonprofit Network Initiative  
Cherokee Investment Partners, LLC  
Smart Growth America  
Scenic America  
Groundwork USA  
Trust for Public Land**

DRAFT

**KEY PROVISIONS FOR**  
**REAUTHORIZATION OF THE FEDERAL BROWNFIELDS LAW**

**FUNDING THAT MEETS AMERICA’S BROWNFIELDS NEEDS**

1. **Increase Cleanup Grant Amounts** – Congress should recognize the complexity of the cleanup process at larger or more complicated sites by increasing the funding limit for cleanup of a single site to up to \$1 million. Under special circumstances, EPA could waive the limit and go up to \$2 million per site
2. **Establish Multi-Purpose Brownfield Grants** – Congress should allow eligible entities to have the option to apply for multi-purpose grants that can be used for the full range of brownfield-funded activities (assessment, cleanup, reuse planning, etc.) on an area-wide or community-wide basis. Such multi-purpose grants should be available in grant amounts of up to \$1.5 million. Applicants would be required to demonstrate a plan and the capacity for using this multi-purpose funding within a set timeline in order to qualify for such funding.
3. **Establish Pilots for Sustainable Reuse and Alternative Energy on Brownfields** – The Act should authorize \$20 million for pilots that demonstrate sustainable reuse, green buildings, and alternative energy. Pilots should allow use of funds for site assessments, cleanup, site planning, feasibility analysis, and engineering studies on sites that will be redeveloped with high performance/green buildings, green infrastructure, ecosystem restoration, and/or renewable energy production.
4. **Establish Pilots for Waterfront Brownfields** – The Act should authorize \$20 million for EPA to fund demonstration pilots and create an interagency taskforce to help communities overcome the unique challenges of waterfront brownfields restoration along rivers, coastal lands, lakes, ports, and other waterbodies.
5. **Increase Total Brownfield Grant Program Funding** – Congress should increase overall EPA funding for brownfields grants, beginning with \$350 million in FY07 and increasing by \$50 million annually to a total of \$600 million in FY12 and beyond.

**MAKING BROWNFIELDS GRANTS WORK BETTER AT THE LOCAL LEVEL**

1. **Facilitate Petroleum/UST Brownfield Cleanups** -- Grantees that seek to use assessment, cleanup or multi-purpose grants on sites with petroleum contamination should not be required to make the difficult demonstrations that the site is “low risk” and that there is “no viable responsible party” connected with the site. Replace the “No Viable Responsible Party” language with a prohibition on using funds to pay for cleanup costs at a brownfield site for which the recipient of the grant is potentially liable under the petroleum statutes (parallels the language for non-petroleum brownfields sites).

Create greater flexibility in use of grant funds by eliminating the currently defined set-aside of total grant funding for petroleum brownfields. Substitute a new “Ranking Criteria” that gives weight to petroleum-contaminated sites.

2. **Clarify Eligibility of Publicly-owned Sites Acquired Before 2002** – Congress should allow local government applicants to obtain funding at sites acquired prior to the January 11, 2002 enactment of the Brownfields Revitalization Act – when there was no required standard for “all appropriate inquiries” – provided that the applicant did not cause or contribute to the contamination and performed “appropriate care.” For these sites, applicants would not have to demonstrate that they performed all appropriate inquiry.
3. **Establish that Non-Profits are Eligible for Assessment and RLF Grants** – The law should clarify that non-profits and related community development entities are eligible to receive brownfields assessment, cleanup, revolving loan fund, and job training grants. Currently non-profits are only eligible for cleanup and job training grants.
4. **Streamline Funding Approvals by Reducing Redundant EPA Reviews** – Congress should direct EPA to streamline the RLF and cleanup grant process by eliminating redundant EPA reviews for quality control, cleanup alternatives analysis, cleanup protectiveness analysis, and community involvement plans, when those reviews are already conducted by a State brownfields response program. EPA should be directed to propose an administrative solution to the problem of redundant EPA involvement in sites that are being overseen by state voluntary cleanup programs.
5. **Allow Funding for Reasonable Administrative Costs for Local Brownfields Programs** -- Brownfield grant recipients should be allowed to use a small portion of their grant to cover reasonable administrative costs such as rent, utilities and other costs necessary to carry out a brownfields project.
6. **Clarify Eligible Brownfields Remedial Activities** – The Act should clarify that assessment, cleanup, RLF, and multi-purpose grants can be used for remedial activities connected with demolition, site clearance and site preparation.

## **TOOLS TO HELP FREE THE MOTHBALLED BROWNFIELD SITES**

1. **Promote State Institutional Control Programs** – The Act should encourage the effective use of institutional controls at brownfield sites by requiring states to develop a plan for establishing, monitoring, and enforcing appropriate institutional control mechanisms designed to assure that all future uses of brownfields sites are consistent with any restrictions placed on such sites.
2. **Promote State and Local Environmental Insurance Programs** – The Act should foster the use of environmental insurance at brownfield sites by supporting State, Local or Tribe-sponsored environmental insurance programs like the successful program in the Commonwealth of Massachusetts, which assist purchasers of environmental insurance who are remediating a brownfield through the state response program. The Act should authorize EPA to provide grants to States, localities or Tribes to support the establishment of environmental insurance programs for brownfields, with a 50% match from the applicant.

3. **Remove Barriers to Local and State Governments Addressing Mothballed Sites** – The Act should exempt local and state government from CERCLA liability if the government unit (a) owns a brownfield as defined by section 101(39); (b) did not cause or contribute to contamination on the property; and (c) exercises due care with regard to any known contamination at the site. Alternative language would amend section 101(20) (D) to clarify that properties acquired through eminent domain qualify for the CERCLA exemption for local governments involved in “Involuntary Acquisitions.”
4. **Extend Protections to Innocent Lease Holders** – The Act currently gives protections to tenants of an entity that qualifies as a Bonafide Prospective Purchaser (BFPP), but does not protect an entity that directly leases land from the seller/RP. The Act should also provide protections to an entity that leases a brownfields site and meets all the other requirements for BFPP protection.
5. **Encourage Voluntary Cleanups of Underground Storage Tank (UST)** – For petroleum-contaminated sites the Act should provide liability protections for Bona Fide Prospective Purchasers and innocent land owners at brownfield sites, parallel to CERCLA/brownfields liability protections. Petroleum-contaminated sites should be afforded the same bar on federal enforcement as that provided under CERCLA if the site is being cleaned up under a qualified state program.
6. **Encourage Voluntary Cleanups of PCBs**– To facilitate PCB cleanups, the Act should :
  - a. Establish that the remediation of PCB sites under qualified State cleanup programs satisfies the federal requirements established under TSCA for cleaning up releases of PCBs;
  - b. Provide protections for Bona Fide Prospective Purchasers and innocent land owners at brownfield sites, parallel to the protections afforded CERCLA/ brownfields sites.
  - c. Establish eligibility for brownfields revitalization funding for PCB-contaminated sites (by eliminating the current exclusion of PCB-contaminated sites from the definition of a brownfields site).

## **ASSISTANCE FOR HIGH PRIORITY COMMUNITIES AND SITES**

1. **Offer EPA Staff for Disadvantaged Communities, Small Communities, and Rural Communities** – The Act should authorize EPA to provide EPA brownfield staff to small, disadvantaged, and rural communities that need support to build local capacity to cleanup and revitalize brownfields. These staff would be provided via Intergovernmental Personnel Act (“IPA”) assignments of up to three (3) years to localities, States, Tribes, and eligible non-profit organizations that competitively apply for an IPA assignment.
2. **Encourage Brownfield Cleanups by Good Samaritans** – The Act should provide an owner-operator exemption from CERCLA liability for non-labile parties that take cleanup action or contribute funding or other substantial support to the cleanup of a brownfield, in conformance with a federal or state cleanup program, but do not take ownership of that site.